IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5121 OF 2006.

Satish Laxman Damle ... Petitioner.

V/s.

Janardhan G. Gogte & Anr. ... Respondents.

Nisha Walani i/b. A.K.Prajapati
for the petitioner.

M.L.Behere for the respondents.

CORAM: V.C.DAGA, J.

DATED: 30th August 2006.

P.C.:

. Leave to amend. Petitioner is directed to delete reference to Article 226 of the Constitution of India.

2. Heard learned counsel for the rival parties.

. Perused petition.

3. The only contention canvassed on behalf of the petitioner is that the trial Court framed additional issue behind the back of the petitioner, however, before delivery of judgment. The said issue relate to question of bonafide requirement of the landlord. The factual matrix

reveals that in spite of service of suit summons, no written statement was filed by the defendant-tenant for a considerable long time. The suit appears to have been filed in July, 1999. Written statement appears to have been filed on 29th September, 2000 on the date when the plaintiff was to be examined. It appears from record that on 29th September, 2000, plaintiff was examined. He was further examined after two years i.e. on 13th February, 2002. On that day, the advocate for the defendant remained absent. With the result, evidence of the plaintiff- landlord went unchallenged for want of cross-examination. The plaintiff also examined one more witness on 13th February, 2002. He was also not cross-examined by the defendant.

4. If one turns to the evidence; in the light of pleadings, it is clear that question of bonafide requirement was pleaded in the plaint with all material facts and particulars. The same was denied by the defendant in his written statement. It is, therefore, clear that the parties were aware of the rival pleadings and contentions. No explanation is coming forth from the defendant as to why his advocate remained absent and did not cross-examine the plaintiff and his witness in spite of the fact that the

plaintiff and his one more witness both were examined after two years.

5. So far are framing of additional issue is concerned, the law is well settled that the issue can be framed or modified or deleted at any stage of the suit; even at the time of delivery of judgment. In this view of the matter, no prejudice is suffered by the petitioner. The prejudice, if any, suffered was not-account of framing of additional issue; but due to absence of cross-examination of the material witnesses; which is not a bone of contentions in this petition. There is no substance in the contention raised by learned counsel for the petitioner leading to framing of additional issue at the time of delivery of judgment.

6. The trial Court judgment was a subject matter of appeal before the lower appellate Court. All these contentions were canvassed before the lower appellate Court. The appellate Court, after considering the facts and circumstances, by well reasoned order confirmed the order of the trial Court and dismissed appeal filed by the

petitioner. Considering the concurrent findings of fact and the manner in which the petitioner has participated in the suit proceedings, this is not a fit case to interfere in exercise of writ jurisdiction of this Court.

7. During the course of arguments, it transpired that the petitioner- tenant has also lost possession since decree for eviction has already been executed. Hence nothing survives in this petition for adjudication. On this count also petition is liable to be dismissed.

8. For the aforesaid reasons recorded herein, petition is dismissed in limine with no order as to costs.

(V.C.DAGA, J.)